

WHITE COLLAR CRIME

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INTRODUCTION

The term "White collar crimes" was first coined by Criminologist and Sociologist Edwin H. Sutherland in the year 1930. He described the term as a "crime committed by a person of respectability and high social status in the course of his occupation"¹. It is the crime that committed by salaried professional workers or person in business and that are usually involves a form of financial theft or fraud. These crimes are non-violent crimes committed by business people through deceptive activities who are able to access large amounts of money for the purpose of financial gain.

White collar crime have great impact over society. The designation *white-collar crime* has come to cover a wide array of illegal and illicit enterprises by both individuals and corporate bodies. White-collar crime covers smuggling, hoarding, black-marketing, trafficking in licence and permit, adulteration of food and drugs, misuse of position by public servants and violation of laws against excise, customs, foreign exchange, etc.

The main categories of white collar crimes are bribery and corruption, food and drug adulteration, counterfeiting, forgery, tax evasion, cyber-crimes etc.

White collar crimes are not a new phenomenon in our country. The Indian Penal Code 1860² is the earliest comprehensive and codified criminal law of India. It also deals with many white collar crimes and punishment is provided for bribery and corruption³, counterfeiting of coins and

¹ Edwin H. Southerland, *White Collar Crime* 14 (1949).

² Act No. 45 of 1860

³ Section 168, 169, 171B, 171C, 171E, 171H of Indian Penal Code, 1860.

government stamps⁴, of offences relating to weights and measures⁵, offences relating to adulteration of food stuffs and drugs⁶.

TYPES OF WHITE COLLAR CRIMES

1) Corruption

Corruption can exist only if there is someone willing to corrupt and capable of corruption. We can say that both the willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes. Corruption is not only an easy method to secure large unearned profits, but also the necessary means to enable them to be in a position to pursue their vocation or retain their position among their own competitors.

Dr. P. Ramanatha Aiyar's definition seems to be very wide. According to him corruption is something against law, something forbidden by law, it is an act or intent to gain advantage not consistent with official duty and the right of others. Corruption can be defined as departure from what is pure or correct from the original⁷. The recent scandals like 2G Spectrum Tele Communication scam, Commonwealth Games scam, Adarsh Housing Society Scam has rocked the nation. The Santhanam Committee report in its finding gave a vivid picture of white collar crimes committed by persons of respectability such as businessmen, industrialists, contractors, suppliers and corrupt public officials.

2) Tax evasion

The complicity of tax laws in India has provided sufficient scope for the tax payers to evade taxes. The evasion is more common with influential categories of persons such as traders, business man lawyers, doctors, engineers, contractor etc. The main difficulty posed before the income tax Department is to know the rest of the money goes in to circulation as black money

⁴ Ibid section 230-263

⁵ Ibid section 264-267

⁶ Ibid section 272-276

⁷ P. Ramanatha Aiyar, *The Law Lexicon*, 414 (2010)

Despite frequent modification in tax laws of the country the menace of tax evasion continues unabated and it is causing considerable loss to government revenue.

The supreme court in its majority decision in R.K Garg V Union of India (1981) 133 ITR 239 upholding the validity of the special Bearer Bonds (Immunity and Exemption) Act, 1981. Observed that the Act was not intended to encourage tax evasion in further and condone such evasion committed in past but the real object of the Act was to launch a nation-wide search to unearth undisclosed wealth by encouraging small incentive to the who declared their undisclosed cash. The main intention was to unearth “black money” so as to prevent further loss revenues.

3) **Food and drug adulteration**

Adulteration in food and drugs causes irreparable damages to the health of innocent people. This evil practice is rapidly increasing in India. Accordingly to survey report of Ministry of health, Government of India about 25% to 70% of the food stuffs consumed in this country are adulterated or contaminated. This tendency is due to the greed of the manufacturers the existing laws are defective and inadequate to prevent food and drug adulteration. The precaution under prevention of food adulteration Act have failed due to

- The defective reports of the public analysis's.
- Delay in the examination of collected samples.
- Non-implementation of proper procedure for collection of samples.

4) **Hoarding, Black Marketing and Adulteration**

The white collar crimes which are common to Indian trade and business world are hoarding, profiteering and black marketing. Violation of foreign exchange regulations⁸ and import and export laws are frequently resorted to for the sake of huge profits. That apart, adulteration of foodstuffs, edibles and drugs which causes irreparable danger to public health is yet another white collar crime common in India⁹. The Consumer Protection Act, 1986; the Narcotic Drugs

⁸ The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 as amended in 1993 (Act No. 52 of 1993) w.e.f. 25-6-1993, See also The Smugglers & Foreign Exchange Manipulators, (Forfeiture of Property) Act, 1976

⁹ The Consumer Protection Act, 1986; the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS) Monopolies and Trade Restrictive Practices (Amendment) Act, 1992 are enacted to prevent these offences which affect the public health.

and Psychotropic Substances Act 1985(NDPS) Monopolies and Trade Restrictive Practices (Amendment) Act, 1992 The law Commission of India has suggested drastic measures against such offenders. In the Commission's observation the tedious prosecution process involved in the trial of such cases frustrates the cause of justice and often results into unjustified acquittal due to defective report of the analyst or delay in examination of samples or lack of legal expertise etc¹⁰.

Hoarding and black marketing of essential good and commodities is one of the main forms of white collar crime. It is frequently done by the traders and business communities in India.

CHRONOLOGICAL BACKGROUND OF THE EMERGENCE OF WHITE COLLAR CRIMES

The first documented case of white collar crime law registered in 15th century is England. There has been a case popularly known as the Carrier's case of 1473, where the agent was entrusted to transport wool and he attempted to steal some of it for him. Therefore, the star chamber and Exchequer chamber of the English Court of law adopted the braking bulk doctrine as it constituted the crime of larceny. Means the crime of theft. However, the growth of industrial capitalism in the eighteenth century ushered a new history of crime and criminality.

The process of emergence of these conditioned was termed by Karl Marx as primitive accumulation' while in the words of Adam Smith, it was previous accumulation.' Therefore, the Dutch Marxist, William Bonger contended that criminal attitude develops among the working class under capitalism due to conditions of misery and at the same time the criminal attitude develops among the bourgeoisie from the avarice fostered when capitalism strives. It succeeded in United States of America in 1890, when Congress passed the Sherman Antitrust Act which took the initiative to make the monopolistic trade illegal. Other industrialized countries like Great Britain had a history of penalties involving white collar crime by that time, but it was not as sweeping as the Sherman Act. Some nations implemented a smattering of these laws, known as competition or antitrust law, but did not have a strong binding force for a long time. But more anti-white-collar crime sentiment rose in the late 19th century and early 20th century in the

¹⁰ Law Commission of India, 47th Report

United States as a result of a group of journalists known as muckrakers. They laid much focus on the prevalent stock fraud, insurance fraud and underhanded practices of monopolistic companies that had grabbed under the Sherman Act. The muckrakers' exposes gave rise to public resentment and thereby called for in some reform. By 1914, Congress attempted to solidify and strengthen the sentiment laid down by the Sherman Act, which was used against labour unions, with the Clayton Antitrust Act. This Act was much stricter and went much further than the Sherman Act in making particular monopolistic practices illegal.

WHITE COLLAR CRIMES IN INDIA

White collar criminality has become a global phenomenon with the advance of commerce and technology. Like any other country, India is equally in the grip of white collar criminality. The reason for the enormous increase in white collar crime in recent decades is to be found in the fast developing economy and industrial growth of this developing country. The Santhanam Committee Report in its finding gave a vivid picture of white collar crimes Committed by persons of respectability such as businessmen industrialists, contractors and suppliers as also the corrupt public officials^s Highlighting the magnitude of white collar crime in India. The commission on prevention of Corruption in its report observed :

“ The advance of technological and Scientific development is contributing to the emergence of mass society with a large rank of file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional machanicisms. Strict adherence to high standard of ethical behavior is necessary for the honest functioning of the new social, political and economic processes. The inability of all sections of society to appreciate this need in full result in the emergence growth of white collar and economic crime , render enforcement of the laws , themselves not sufficiently deterrent , more difficult. Tax evasion and avoidance, share pushing, malpractices in the share market and administration of the companies, monopolistic control, usury, Under invoicing or over invoicing, hoarding, profiteering, substandard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some examples of white collar crime”.

White collar crimes are to be considered as a global phenomenon to which India is no exception. As discussed earlier, white collar crimes emerged in India with the advent of the British colonisation during the period of industrial capitalism. Prior to that, instances of men working with the District treasury embezzling with the money kept under his safe custody or bribing practiced among the officials were found. Therefore, the white collar crimes were confined to this limit. Thus, the people indulging in the white collar crimes then can be said to be mere grass eaters' the people in the modern times have reached the stage of meat-eaters.

CAUSES OF WHITE COLLAR CRIME

The general perception is that the white collar crimes are committed because of greed or economic instability. But these crimes are also committed because of situational pressure or the inherent characteristic of getting more than others. However, there are various reasons for white collar crimes.

- **Not really a crime:** Some offenders convince themselves that the actions performed by them are not crimes as the acts involved does not resemble street crimes.
- **Not realizable:** Some people justify themselves in committing crimes as they feel that the government regulations do not understand the practical problems of competing in the free enterprise system.
- **Lack of awareness:** One of the main reason of white collar crime is the lack of awareness of people. The nature of the crime is different from the traditional crimes and people rarely understand it though they are the worst victims of crime.
- **Greed:** Greed is another motivation of the commission of crime. Some people think that others are also violating the laws and so it is not bad if they will do the same.
- **Necessity:** Necessity is another factor of committing crimes. People commit white collar crimes in order to satisfy their ego or support their family.

CRIMINAL LIABILITY OF THE CORPORATIONS

In Indian as well as in international perspective the whole legal frameworks to hold the corporations and multinational companies accountable are systematically being dismantled, even as corporations and other agents of globalization dictate policies of nations. The corporate sector

enjoys far more rights than the common people. With the onset of the new trade regime, national laws are being changed to empower corporations with the right to hire and fire at will, to get the first right over natural and community resources. But now the time has come to put a check over their arbitrary acts. There has been a debate as to whether a Corporation can be held criminally liable.

THEORY OF CORPORATE PERSONALITY

According to this theory corporations as nothing more than collectives of individuals. In this an individual first commits the offence; the responsibility of that individual is then imputed to the corporation.

Realist theory

According to these theory corporations have an existence, which is to some extent independent of the existence of its members. Here, the responsibility of corporation is primarily. In my opinion realist theory looks more convincing and practically applicable. One of the argument which sustains the presumption that corporate can be held criminally liable is that in many cases it is the corporation itself, through its policies or practices, that has done wrong and prosecution and punishment should be directed at the real wrongdoer. In many cases there is no individual who, alone, has committed a crime. It is the conjunction of the practices of several individuals, all-acting in compliance with a company's sloppy or non-existent procedures that have caused the harm. Alternatively, in many cases companies have complex structures with responsibility buried at many different layers within the corporate hierarchy making it difficult, if not impossible, to determine where the true fault lies.

There is no controversy when fine is only punishment given under any statute. There is also no lie when statute entrusts the court with discretion to inflict fine or imprisonment, as in this case court shall inflict only fine on company. Because a company being a Juristic person cannot obviously be sentenced to imprisonment as cannot suffer imprisonment. Judicial controversy lies in that situation when statute prescribes mandatory imprisonment with fine as a punishment for an offence. In 2003 Supreme Court in Assistant Commissioner, Assessment-II, Banglore & Ors. v. Velliappa Textiles Ltd & Anr. took the view that since an artificial person like a company

could not be physically punished to a term of imprisonment, such a section, which makes it mandatory to impose minimum term of imprisonment, cannot apply to the case of artificial person. However, Supreme Court in 2005 in Standard Chartered Bank v. Directorate of Enforcement in majority decision of 3:2 expressly overruled the Velliappa Textiles case on this issue. K.J Balkrishanan J. in majority opinion held “*We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles on this point*”.

Another category of serious white collar crime is government fraud, which is an unlawful act that deliberately rid the government of funds through trickery. When the government gets fiddled, taxpayers pay the price. Procurement and contractor fraud are examples of costliest government fraud. In Identity theft the criminal use the personal information of another in order to commit fraud. Crooks of this type of crime have to face heavy penalties if trapped. Insurance fraud is very common in which offender forged claims to an insurance company, personal injury and property damage claims that are overstated in order to collect extra reimbursements. Mail fraud is committed by using Postal Service or any private or commercial interstate mail carrier, such as Mailboxes, etc. Money laundering is a felony in which lawbreakers hide the resource and objective of illegitimately acquired funds. Public corruption is an act of violating the public official's duty of faith towards his or her society. Anyone who is elected, appointed, hired, or employee of a constituency of citizens commits crime on the state, or local level when an official takes favorable decision in exchange of offered some value. Securities fraud is committed by white collar criminal such as corporations, broker-dealers, analysts, and private investors when the executor intentionally deceives investors for financial profits. The culprit of tax evasion deliberately and illegally avoids paying mandatory taxes to the government. Telemarketing fraud fall under white collar criminal in which wrongdoer make some plan that uses telephone contact to fraudulently rid its victims of funds or assets. The most regular type of telemarketing frauds are prize offers and sweepstakes, magazine sales, credit card sales.

If we have specific legislations to trace out White Collar Criminality then why these offenders go unpunished? Main reasons for which these white Collar criminals or occupational criminals go unpunished are :

- i) legislators and the law implementers belong to the same group or class to which these occupational criminals belong;
- ii) less police effort;
- iii) favorable laws;
- iv) less impact on individuals.

At this present juncture what we need is the strengthening of our enforcement agencies such as Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, The Income-tax Department and the Customs Department. Concentration and distribution of national wealth must be done in a proper manner. Speedy trial should be arranged by appointing more Judges. Central Vigilance Commission must keep a constant vigil on the workings of the top ranking officers. General public must not avoid being engaged themselves in the prosecution of the White-collar criminals as the offence in general is directed towards them. Lastly if they are traced and proved guilty then Deterrent Theory of punishment is an apt one.

WHITE COLLAR- SOCIETY

The major white collar crime very common among the individuals, no matter he/she belongs to the middle or upper strata of the society is that of evading taxes. The complexity of the taxation laws provided a number of loopholes through which many individuals tried to escape. A tax-evasion has known no professional or class boundary in our country. Be it an engineer, doctor, advocate, a business tycoon or a simple small industry trader-all have learnt the trick of evading taxes. The main difficulty posed before the Income Tax Department is to acquire true information of the real and exact income of these professionals. It is often alleged that only an insignificant amount of their total income is posed a income before the Income Tax Department and the rest therefore goes into the circulation as black money. The frequent modifications in the tax-laws of the country has been able to add very little to put a check on this continuing menace which is throwing a great negative impact in the Governmental revenue and thereby the growth of the country.

COMPUTER RELATED WHITE COLLAR CRIME

The latest developments in information technology and electronic media especially during 1990's have given rise to a new variety of computer related white collar crime which are commonly called cyber-crimes. The widespread growth of these crimes has become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the peculiar nature of these crimes, they can be committed anonymously and far away from the victim without being physically present there. Further, cyber criminals have a major advantage; they can use computer technology to inflict damage without the risk of being caught. The cyber crimes cover a wide range of illegal computer-related activities which include offences such as theft of communication services, industrial espionage²⁶, dissemination of pornographic and sexy offensive material in cyber-space, electronic money laundering and tax evasion, electronic vandalism, terrorism and extortion, tele-marketing frauds, illegal interception of telecommunication, etc.²⁷ Australian Institute of Criminology at the Centre of Criminology, University of In fact, there is a cyber-crime wave in the 21st century. Presently, viruses²⁸ are the most common problems which are causing serious damage to computer systems.

Most viruses just replicate themselves, but many also cause damage. There are now more than 5000 different strains of viruses across the globe. For instance, 'Love Bug' virus of May 2000 caused severe damage to working internet sites. So also the virus recently developed by Pakistan has defaced the Indian web-site.

Besides virus, there are some common cyber offences which are directed against computer systems, networks or data. Notable among them are:-

It is a way to circumvent the billing mechanism of telephones allowing anyone to call anywhere in the world literally without any cost.

IN INDIA CRIME AND FRAUD IN WHITE COLLAR

2010-2011 Annual Global Fraud Survey report of Kroll conducted by Economist Intelligence Unit gives expected results. Fraud continues to be a big problem worldwide and more so in India. Of the companies surveyed, globally 75% reported experiencing fraud during the year. Though the figure has reduced in comparison to previous year's 88%, the situation is still dismal. In India, the situation is disastrous, with 84% organizations reporting that they suffered from fraud during the year. It is wake-up call for India, as it is ranked second worldwide after Africa and shares the position with China. The chart below compares the top six fraud categories at global level with India. In most of the cases, India is doing much worse than its global counterparts are. Worldwide management conflict of interest, internal financial fraud, corruption and bribery and vendor procurement related frauds have increased. Physical theft of assets and information theft decreased. Indian business crucial pain points are corruption and bribery, information theft, internal financial fraud, financial mismanagement and vendor procurement.

LAWS RELATING TO WHITE COLLAR CRIMES

The government of India has introduced various regulatory legislations, the breach of which will amount to white-collar criminality. Some of these legislations are Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951, The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act 1974, Companies Act 1956, Prevention of Money Laundering Act 2002. The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, credit card fraud etc. In case of money laundering several steps have been taken by the government of India to tackle this problem. The Reserve Bank of India has issued directions to be strictly followed by the banks under KYC (Know Your Customer) guidelines. The banks and financial institutions are required to maintain the records of transactions for a period of ten years.

In order to tackle with computer-related crimes, Information Technology Act, 2000 has been enacted to provide legal recognition to the authentication of information exchanged in respect of commercial transactions.

Section 43 and 44 of Information Technology Act prescribes the penalty for the following offences:

- Unauthorised copying of an extract from any data.
- Unauthorised access and downloading files.
- Introduction of viruses or malicious programmes.
- Damage to computer system or computer network.
- Denial of access to an authorised person to a computer system.
- Providing assistance to any person to facilitate unauthorised access to a computer.

Though the focus of Information Technology Act is not on cybercrime as such, this Act has certain provisions that deal with white collar crimes. Chapter XI deals with the offence of cyber crime and chapter IX deals with penalties and adjudication of crime. Apart from this, many issues are unresolved due to lack of focus. Some of them are:

- Inapplicability
- Qualification for appointment as adjudicating officer not prescribed
- Definition of hacking
- No steps to curb internet piracy
- Lack of international cooperation
- Power of police to enter and search limited to public places
- Absence of guidelines for investigation of cyber crime

There are some measures to deal with white-collar crimes. Some of them are, creating public awareness of crimes through media or press and other audio-visual aids and legal literacy programmes. Special tribunals should be constituted with power to sentence the offenders for at least 5 years and conviction should result in heavy fines rather than arrest and detention of criminals. Unless the people will strongly detest such crimes, it is not possible to control this growing menace.

CONCLUSION

India to maintain its growth story needs to reduce fraud and corruption in government and private sector. As previously mentioned corruption and fraud stop multinationals from investing in the country. The decrease in foreign direct investment in 2011 and the international financial institutions outflow of funds from stock markets are clear indicators of the negative impact of fraud and corruption.

Therefore, Indian government must improve governance and take strict action against the offenders. Comptroller Auditor General is showing the way forward, the need of the hour is for political parties to have the spirit to clean up the mess. The private sector must implement fraud prevention measures and focus on ethics to reduce frauds. Both sectors have to collaborate to minimize fraud risks in India. The reasons of justifications are there for the methods used for the control of white collar crimes, the ambivalence of the social response to this sort is so related to wider social factors which have both objective and subjective dimensions. As has been so mentioned a more subjective source of ambivalence in the social response to white collar crimes is the assumption that there is less public concern about these behaviours so termed as white collar crimes, and therefore there is a less support for severe sanctions than in the cases of crimes which are traditional street crimes. But even if there was greater public ambivalence towards white collar crimes in comparison to the traditional crimes, writers such as Box has regarded this as a further challenge to sensitize people to not seeing processes in which they are victimised disasters or accidents.

Therefore, the motto should always be prevention is better than cure. Since the acts involved defrauding public faith and belief, public as a whole mass should come forward to protect the whole society from these greedy people who are destroying the ethics and morality of the society slowly and slowly for their sole aim of pursuing narrow self.